IN THE COURT OF APPEALS OF IOWA

No. 9-1023 / 09-1162
Filed February 10, 2010

PENFORD PRODUCTS COMPANY, Employer, and ZURICH NORTH AMERICAN, Insurance Carrier,
Petitioners-Appellees,

vs.

JIM AHLBERG,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson, Judge.

An employee appeals from the district court's ruling on judicial review, reversing the award of penalty benefits. **REVERSED.**

Thomas Wertz, Cedar Rapids, for appellant.

Lisa Perdue, Des Moines, for appellees.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

Jim Ahlberg appeals from the district court's ruling on judicial review, which reversed the Iowa Workers' Compensation Commissioner's award of penalty benefits assessed against Penford Products Company (Penford) and its insurer, Zurich American Insurance Company.

I. Background Facts and Proceedings

On December 12, 2003, Ahlberg sustained a right knee injury after falling on ice at work. This occurred days after Ahlberg returned to work following arthroscopic knee surgery to repair meniscus tears in the right knee. Another incident occurred at work on December 15, 2003. Following the injury, Ahlberg saw an orthopedic surgeon, David Tearse, M.D., who found Ahlberg sustained a new injury from his December 12 fall. Penford accepted this claim and paid his 2004 entitlement to weekly workers' compensation benefits. Ahlberg returned to work in April 2004 without restrictions. In February 2005, Ahlberg revisited Dr. Tearse due to increased right knee pain, but denied any new injury. After persistent symptoms, in August 2005, Dr. Tearse recommended a total knee replacement. At the employer's request, he clarified the reason for the surgery, stating:

> While his work-related injury did aggravate his knee pain, I believe that his need for knee replacement surgery is secondary to osteoarthritis, which was preexisting. I do not believe that his work injury of 12/12/03 is the primary cause of his knee to be evaluated for possible joint replacement.

Penford initially denied further responsibility for the knee injury based on this letter. Ahlberg saw orthopedic physician Patrick Sullivan, M.D., who recommended a total knee replacement and later opined that the work injury was

a substantial contributing factor to the condition. Ahlberg had total right knee replacement surgery in May 2006. In March 2007, Ahlberg saw orthopedic surgeon Ray Miller, M.D., who also opined the December 12 injury was a substantial contributing factor to this surgery. Following Dr. Miller's conclusions, in April 2007, Penford paid Ahlberg for his 2006-2007 entitlement to weekly workers' compensation benefits. Ahlberg asserted he was entitled to penalty benefits for this and other delays in payment.

In the arbitration decision, the deputy commissioner found that Penford and Zurich were to pay Ahlberg $13,818.06 as a penalty for unreasonable delays, stating Penford's explanation for the delays were unclear.[1] Upon Penford's intra-agency appeal, the acting commissioner affirmed the arbitration decision. On judicial review, the district court reversed the agency decision, and Ahlberg appeals.

II. Standard of Review

Section 17A.19(10) of the Iowa Administrative Code governs the standard upon which we review a decision of the commissioner. *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 334 (Iowa 2008). When reviewing the agency's factual determinations, we determine whether the factual determinations are based on "substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f)) (2005); *Schadendorf*, 757 N.W.2d at 334. When we review a district court decision reviewing agency action, our task is to determine if we would reach the same result as the district

[1] This amount also includes a penalty for other late payments.

court in our application of the Act. *City of Des Moines v. Employment Appeal Bd.*, 722 N.W.2d 183, 189-90 (Iowa 2006).

III. Penalty Benefits

Ahlberg asserts he is entitled to penalty benefits because of an unreasonable delay of payment from his work-related knee injury.

> If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

Iowa Code § 86.13. "Reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits." *Keystone Nursing Care Ctr. v. Craddock*, 705 N.W.2d 299, 307 (Iowa 2005) (quoting *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 260 (Iowa 1996)). A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable." *Id.* A claim is "fairly debatable" if reasonable minds can differ on the coverage-determining facts or law. *City of Madrid v. Blasnitz*, 742 N.W.2d 77, 82 (Iowa 2007).

While an employee is entitled to compensation for a work-related injury including an aggravation to a preexisting condition, the employer is still entitled to delay commencement of the payment if a reasonable basis exists for doing so. *Compare Yeager v. Firestone Tire & Rubber Co.*, 253 Iowa 369, 374, 112 N.W.2d 299, 302 (1961) (aggravation of injury) *with Keystone Nursing Care*, 705 N.W.2d at 307 (reasonable basis for delay). An injury is compensable when that

injury proximately caused the medical condition, or was a substantial factor in bringing about that condition. *Miller v. Lauridsen Foods, Inc.*, 525 N.W.2d 417, 420 (Iowa 1994). The district court found that "[Ahlberg's] claim with regard to the right knee replacement surgery was 'fairly debatable,' as reasonable minds could differ on the 'coverage-determining facts or law.'" However, it is the employer's burden to assert facts upon which the agency could reasonably find the claim was "fairly debatable." As the commissioner determined, Penford failed to present such facts.

For this claim to be fairly debatable, the employer had to present facts supporting a conculsion that the work injury was not a substantial factor in bringing about Ahlberg's need for knee replacement surgery. Although Dr. Tearse opined, "I do not believe that [Ahlberg's] work injury of 12/12/03 is the primary cause of his knee to be evaluated for possible joint replacement," he was not asked to clarify whether this also meant that the work injury was not a substantial contributing factor to the anticipated knee replacement. Instead, he premised his statement with Ahlberg's "work related injury did aggravate his knee pain," showing a clear aggravation to a preexisting condition. Dr. Sullivan in his letter of October 18, 2006, acknowledged Ahlberg's work injury was, although not primary, a "substantial contributing factor" for the resulting knee replacement surgery. Thus, at the time the employer delayed payment of benefits, it did not have any medical opinion indicating that the work injury was not a substantial factor in bringing about the need for the surgery.

We reverse the district court's decision, as the agency's decision was supported by substantial evidence and not based on an erroneous application of the law.

REVERSED.